

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Affordable Connectivity Program)	WC Docket No. 21-450
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)	

COMMENTS OF ADTRAN, INC.

ADTRAN, Inc. (“ADTRAN”) submits these comments in response to the Commission’s request for input on the new Affordable Connectivity Program,¹ which addresses revisions to the Emergency Broadband Connectivity Fund Assistance program adopted by Congress as part of the *Infrastructure Act*.² ADTRAN addresses one particular aspect of the Commission’s new Affordable Connectivity Program – ADTRAN urges the Commission to specify minimum performance standards and usage allowances for broadband services that would be eligible for subsidization under the program.

ADTRAN, founded in 1986 and headquartered in Huntsville, Alabama, is a leading global provider of networking and communications equipment. ADTRAN’s products enable voice, data, video and Internet communications across a variety of network infrastructures.

¹ *Public Notice*, Wireline Competition Bureau Seeks Comment on Implementation of the Affordable Connectivity Program, DA 21-1453, released November 18, 2021 (hereafter cites as “*Public Notice*”).

² Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021), *available at* <https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf> (“*Infrastructure Act*”). The Commission adopted rules concerning the Emergency Broadband Connectivity Fund Assistance program in an Order released on February 26, 2021. *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Order, 36 FCC Rcd 4612 (2021) (“*EBB Program Order*”).

ADTRAN’s solutions are currently in use by service providers, schools and libraries, private enterprises, government organizations and millions of individual users worldwide. ADTRAN thus brings an expansive perspective to this proceeding, as well as an understanding of the importance to individuals, communities and our country of broadband service. The COVID-19 pandemic reinforced the necessity of households being able to subscribe to robust broadband in order to access remote education, telehealth and work-from-home applications, and Congress in extending and expanding the Emergency Broadband Connectivity Fund Assistance program into the Affordable Connectivity Program recognized that for many low-income households, the cost of broadband service makes it unaffordable. ADTRAN applauds Congress’ efforts to enhance broadband affordability through adoption of the Affordable Connectivity Program, along with the Commission’s prompt efforts to implement that program.

With respect to the issue of minimum service standards, the *Public Notice* recognized that the Commission had declined to adopt minimum service requirements for eligible services in the *EBB Program Order*, but asks whether the Commission should “reconsider this approach for the Affordable Connectivity Program?” and whether “the Commission have the authority under the Infrastructure Act to institute minimum service standards for the Affordable Connectivity Program?”³ ADTRAN’s answer is a resounding YES to both of those questions.

As the *Public Notice* acknowledges, the *Infrastructure Act* “modifies and extends the Emergency Broadband Benefit Program (EBB Program) to a longer-term broadband affordability program to be called the Affordable Connectivity Program.”⁴ And in establishing the requirements for the EBB Program, the Commission indicated that:

³ *Public Notice* at ¶ 54.

⁴ *Public Notice* at ¶ 1 (citation omitted).

We find that qualifying Internet service offerings must include a broadband connection ... that permits households to rely on these connections for the purposes essential to participating in society during the pandemic, such as telework, remote learning, and telehealth. A majority of commenters support this approach, explaining that broadband speeds should be sufficient for telework and distance learning, and discount-eligible Internet service offerings should feature speeds comparable to those offered to market-rate customers.⁵

That minimum level of functionality, which was critical to the EBB Program, is likewise essential for the Affordable Connectivity Program. And the best way for the Commission to ensure that the subsidized broadband service is capable of providing that functionality is to prescribe minimum service standards for broadband services to be eligible for the Affordable Connectivity Program. ADTRAN also believes that the most efficient means of establishing those minimum service standards would be to adapt the in-place and well-understood minimum service standards already used by the Commission for the Lifeline program.⁶

The Commission recognizes that one of the critical obligations imposed by Congress on the Commission in connection with the Affordable Connectivity Program is avoiding waste, fraud and abuse. Indeed, the *Public Notice* specifically mentions “waste, fraud and abuse” some 26 times. And it clearly would be a waste of the Affordable Connectivity Program funds to subsidize services that cannot reliably provide the functionality to support basic education, health care, remote work, disability access and public safety. Prescribing minimum service standards would thus help prevent waste.

⁵ *EBB Program Order* at ¶ 73. *See also, EBB Program Order* at ¶ 74 (“Indeed, we understand that low-income consumers must have access to reliable broadband connections vital for basic education, health care, remote work, disability access and public safety”).

⁶ 47 C.F.R. § 54.408. While ADTRAN recognizes that higher speeds would provide greater functionality, particularly for households with multiple children, these requirements would be *minimums*, and not the only option that an Affordable Connectivity Program recipient could purchase with the subsidies.

ADTRAN acknowledges that in adopting the rules for the EBB Program, the Commission declined to include minimum service standards.⁷ However, in reaching that decision, the Commission indicated that it was doing so because the EBB Program was a temporary, emergency measure.⁸ The Affordable Connectivity Program, in contrast, is not limited to the duration of the COVID pandemic, and is funded in an amount of \$14.2 billion, which is expected to sustain the program for many years.

In the *EBB Program Order*, the Commission also stated that “the Consolidated Appropriations Act does not indicate Congressional intent that we apply Lifeline’s minimum service standards for the EBB Program.”⁹ While the Consolidated Appropriations Act did not specifically require the Commission to apply the Lifeline minimum service standards, it certainly gave the Commission authority to do so. The legislation establishing the EBB Program defines “broadband Internet access service” by referencing Section 8(1)(b) of the Commission’s rules. While the definition in Section 8(1)(b) does not itself directly incorporate any minimum speed requirements (other than excluding dial-up service), the statute also refers to “any successor regulation.” And the Commission did adopt minimum performance requirement rules for eligible broadband services in the context of extending Lifeline subsidies to broadband services,¹⁰ which is arguably a “successor regulation.” But in any event, Section 904(f)

⁷ *Public Notice* at ¶ 54.

⁸ *E.g.*, *EBB Program Order* at ¶ 74 (“Given the emergency nature of the EBB Program and the vital need to maximize consumer choice and benefits in a short timeframe”); *ibid* (“Even though the EBB Program is an emergency, temporary program”); and ¶ 71 (“On balance, we believe that dictating the required offerings in a temporary program will discourage participation and result in less consumer choice than would otherwise be available if we provided participating providers with more flexibility.”).

⁹ *EBB Program Order* at ¶ 74.

¹⁰ 47 C.F.R. § 54.408.

specifically provides the Commission with authority to apply its part 54 rules to the EBB Program:

(f) PART 54 REGULATIONS. —*Nothing in this section shall be construed to prevent the Commission from providing that the regulations in part 54 of title 47, Code of Federal Regulations, or any successor regulation, shall apply in whole or in part to the Emergency Broadband Benefit Program*, shall not apply in whole or in part to such Program, or shall be modified in whole or in part for purposes of application to such Program. (emphasis added)

And as the *Public Notice* recognizes:

In enacting the Affordable Connectivity Program, the Infrastructure Act did not make any substantive changes to section 904(f), which permits the Commission to apply rules contained in part 54 of the Commission’s rules to the EBB Program.¹¹

Congress clearly provided the Commission with the discretion to apply its Part 54 rules -- including Section 54.408 -- to the successor to the EBB Program, the Affordable Connectivity Program.¹² And as noted above, prescribing minimum service standards will ensure that the

¹¹ *Public Notice* at ¶ 138.

¹² ADTRAN recognizes that Section 60502 of the *Infrastructure Act* does provide that:

(7) REQUIREMENT TO ALLOW CUSTOMERS TO APPLY AFFORDABLE CONNECTIVITY BENEFIT TO ANY INTERNET SERVICE OFFERING. —

(A) IN GENERAL. —A participating provider—

- (i) shall allow an eligible household to apply the affordable connectivity benefit to any internet service offering of the participating provider *at the same terms available to households that are not eligible households*; and
- (ii) may not require the eligible household to submit to a credit check in order to apply the affordable connectivity benefit to an internet service offering of the participating provider. (emphasis added)

ADTRAN contends that this provision is intended to modify the previous provision of the EBB Program that limited eligible services to those offered as of December 1, 2020, and to ensure that the participating broadband service providers do not discriminate against the beneficiaries of the Affordable Connectivity Program. This provision of Section 60502 is not a limitation on the ability of the Commission to impose the Part 54 minimum service requirements. Indeed, as noted above, Congress specified that “Nothing in this section shall be construed to prevent the Commission from providing that the regulations in part 54 of title 47 ... shall apply in whole or

subsidized service provides the requisite functionality to support remote education, telehealth and work-from-home applications.

The minimum service standards for fixed broadband services specified in Section 54.408 for upload and download speeds and usage allowances would accomplish the goal of ensuring that the subsidized broadband service can provide the requisite functionality.¹³ While Section 54.408 also specifies minimum performance requirements for mobile broadband services, the speeds and data allowances for mobile broadband are much lower,¹⁴ and would not ensure the appropriate functionality, particularly if there are multiple devices operating in the household simultaneously -- which would be expected if multiple children in the home are attending classes remotely. ADTRAN thus urges the Commission to require that broadband services eligible to be

in part to the Emergency Broadband Benefit Program ... or shall be modified in whole or in part for purposes of application to such Program .”

¹³ Section 54.408 set the performance requirements, and also provides for periodic updates. The current requirements for fixed and mobile broadband services were specified to go into effect on December 1, 2021. *Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount*, Public Notice, DA 21-930, (WCB July 30, 2021). That Public Notice proposed no changes to the minimum service speeds – 25/3 Mbps for wireline broadband, and 3G for mobile broadband – and proposed to increase the minimum monthly wireline data usage allowance to 1229 GB per month, and the minimum monthly mobile broadband data usage allowance to 18 GB per month. However, the Commission subsequently decided to freeze the increase in the mobile broadband data allowance so that it will remain at 4.5 GB until December 1, 2022 (having previously declined to impose the increases called for by the formula to determine annual increases to the minimum service standard for mobile broadband data capacity). *Lifeline and Link Up Reform and Modernization*, DA 21-1389, released November 5, 2021.

¹⁴ As noted in the previous footnote, mobile broadband service currently is subject to a monthly data allowance of only 4.5 GB per month (in contrast to the fixed broadband monthly minimum of 1,229 GB), and a speed minimum of “3G.” But simply requiring “3G” does not specify any particular minimum download or upload speeds, and 3G service typically provides less than 5 Mbps download speeds. 3G can provide service at download speeds of up to 7.2 Mbps, and upload speeds of up to 2 Mbps, although actual 3G download speeds exhibited by the major carriers ranged from 4.2 Mbps to 0.9 Mbps. <https://www.lifewire.com/how-fast-are-4g-and-3g-internet-speeds-3974470>

subsidized under the Affordable Connectivity Program would need to provide minimum download speeds of 25 Mbps, upload speeds of 3 Mbps, and a monthly usage allowance of 1024 GB, consistent with Section 54.408(b)(1) of the Commission’s rules as currently updated.¹⁵

Finally, ADTRAN also urges the Commission to implement a monitoring program to ensure that the subsidized customers are actually getting broadband service consistent with these minimum service standards. While particular broadband technologies have certain theoretical capabilities, the customers’ ability to use applications to support work-from-home, remote education and telehealth requires actual broadband speeds to perform satisfactorily. But rather than “reinvent the wheel,” the Commission can utilize the program the Commission adopted for its broadband subsidy programs, which incorporates specific testing requirements and sampling techniques.¹⁶

ADTRAN also urges the Commission to supplement those formal monitoring programs with “crowd sourcing” as an additional means of tracking whether the participating broadband service providers are meeting their performance obligations. The Commission has adopted

¹⁵ Section 904(f) provides that the Commission has the authority to specify that the Part 54 regulations “shall be modified in whole or in part for purposes of application to” the Affordable Connectivity Program. Thus, the Commission has the discretion not to utilize the mobile broadband minimum requirements for the Affordable Connectivity Program. In addition, although not specifically included in Section 54.408(b)(1), the Commission should consider limiting the eligibility of high-latency (above 100 ms) services for support under this program. As the Commission recognized in increasing the weight assigned to high-latency services under the Rural Development Opportunity Fund program, such broadband services may not support interactive, real-time applications. *Rural Digital Opportunity Fund*, 35 FCC Rcd 686 (2020) at ¶ 41. Thus, high-latency services would not be able to support remote education, remote healthcare and work-from-home services, which would defeat the purpose of the Affordable Connectivity Program.

¹⁶ *Connect America Fund*, 33 FCC Rcd 6509 (2018)

“crowd sourcing” in other contexts.¹⁷ The Commission could create a portal for crowdsourced data on the performance of Affordable Connectivity Program services. Customers could report self-conducted speed tests as evidence of performance below the Commission-specified requirements.¹⁸

ADTRAN recognizes that such crowd-sourced data may not provide definitive proof that a subsidized provider was not meeting its performance obligations. Speed tests can be affected by numerous factors, including the device being operated, the Wi-Fi network and the number of devices being operated simultaneously in the household. ADTRAN would thus suggest that the Commission use the crowdsourced data as a trigger for a further investigation. If a sufficient number of reported data points suggest that there may be a problem with performance meeting the minimum requirements, USAC or the Commission could initiate an investigation.

For the reasons explained above, ADTRAN urges the Commission to establish minimum performance requirements for broadband services under the Affordable Connectivity Program consistent with the current eligibility requirements for fixed broadband services under the Lifeline program. Such a requirement would ensure that the subsidized services can provide the

¹⁷ *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, 34 FCC Rcd 7505 (2019) at ¶¶ 2, 3, 35.

¹⁸ Indeed, the designers of app-based or web-based speed and latency measurement programs might also be able to include an option that would allow the results of the tests to be reported to the Commission.

necessary functionality for telework, remote learning, and telehealth, and thus ensure that the funding is not wasted on inadequate broadband services.

Respectfully submitted,
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